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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Guinea

1. Introduction: overview of the legal and institutional framework of Guinea in the context of implementation of the United Nations Convention against Corruption

Guinea signed the United Nations Convention against Corruption on 13 July 2005 and deposited its instrument of ratification with the Secretary-General of the United Nations on 29 May 2013.

The criminalization and prosecution of some Convention offences are covered in the New Criminal Code and the New Code of Criminal Procedure, both adopted at the end of 2016, and Act No. L/2006/010/AN of 24 October 2007 on combating money-laundering in the Republic of Guinea (hereinafter "the Money-Laundering Act"). At the time of the country visit, there was a preliminary draft act on preventing, detecting and suppressing corruption and related offences in the Republic of Guinea, of March 2016 (hereinafter "the draft Anti-Corruption Act"). However, owing to the lack of case law, a detailed review of the implementation of the Convention was not possible in practice.

Guinea is a member of the Organization for the Harmonization of Business Law in Africa (OHADA) and the Economic Community of West African States (ECOWAS).

Duly ratified or approved treaties, once published, take precedence over domestic legislation (art. 151 of the Constitution). Therefore, they are directly applicable.

Guinea is still in the process of establishing the architecture and areas of competence of the institutions responsible for combating corruption. Nonetheless, at the time of the country visit, the main competent bodies were:

- The National Anti-Corruption Agency (ANLC), established by Decree No. D/2012/132/PRG/SGG of 12 December 2012 as a unit within the Office of the President of the Republic. The Agency's main role is to develop the national good governance policy, monitor its implementation and conduct activities to prevent, detect and suppress corruption.
- The National Financial Information Processing Unit (CENTIF), established by Decree No. D/2015/049/PRG/SGG of 2 April 2015. The Unit is responsible chiefly for receiving, analysing and processing reports of suspicious transactions.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Bribery of national public officials is a criminal offence (art. 771 of the New Criminal Code and art. 154 of the Mining Code), and the new definition of the offence in the Criminal Code meets the requirements of the Convention. However, at the time of the country visit, the Criminal Code had just been adopted and had not yet been implemented in practice.

A definition of the concept of national and foreign public officials is provided in the draft Anti-Corruption Act in the form of an exhaustive list (arts. 10 and 11).

Bribery of foreign public officials and officials of public international organizations is a criminal offence (art. 772 of the New Criminal Code and art. 12 of the draft Anti-Corruption Act). However, the definitions provided in those two texts are not identical. A definition of passive bribery is not provided in the draft Anti-Corruption Act; however, the Act will derogate from ordinary law once it has been adopted.

Trading in influence is a criminal offence (art. 774 of the New Criminal Code). However, the offence of active trading in influence applies only to public officials.

Active bribery in the private sector is a criminal offence (art. 777 of the New Criminal Code and art. 154 of the Mining Code).

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is a criminal offence under articles 499 and 778 of the New Criminal Code and article 2 of the Money-Laundering Act. It is applicable to the widest possible range of predicate offences, including all those established by the Convention and those committed abroad (art. 499 of the New Criminal Code and art. 2 of the Money-Laundering Act). The Money-Laundering Act covers the laundering by a person who has committed a predicate offence of the proceeds of that offence (art. 2 (4)).

Concealment is a criminal offence (art. 779 of the New Criminal Code).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The embezzlement or misappropriation of public property is a criminal offence (art. 773 of the New Criminal Code). However, the relevant provisions were established only recently and the application of administrative penalties remains the most common punishment for those offences.

In 2015, the National Directorate of Property Records and Equipment classified and recorded all State property.

Abuse of functions is a criminal offence under article 775 of the New Criminal Code and is referred to in article 4 of the draft Anti-Corruption Act.

Article 776 of the New Criminal Code criminalizes illicit enrichment and provides for reversal of the burden of proof. However, the list of persons to whom the offence applies differs significantly from the list of persons to whom other corruption offences apply. In addition, the obligation to declare assets applies only to ministers and the Head of State (art. 36 of the Constitution) and the verification system is not yet operational. The draft Anti-Corruption Act provides for the application of that obligation to a wider range of officials (art. 78).

Theft (art. 373 of the New Criminal Code), breach of trust (art. 428 of the same Code) and the misuse of corporate assets (art. 903 of the Code and art. 891 of the Uniform Act of the Organization for the Harmonization of Business Law in Africa of 17 April 1997 on commercial companies and economic interest groups) are criminal offences and reflect the elements provided for by the Convention.

Obstruction of justice (art. 25)

The offence of obstruction of justice is established by the New Criminal Code (art. 737), but has not yet been applied in practice.

Liability of legal persons (art. 26)

The general principle of liability of legal persons is established in article 16 of the New Criminal Code. That liability is without prejudice to the liability of natural persons. Legal persons are criminally liable for the commission of corruption and related offences (art. 782 of the New Criminal Code). In addition to a number of administrative penalties such as prohibition from carrying on business (art. 41 (6) of the Money-Laundering Act and art. 113 of the draft Anti-Corruption Act), legal persons are liable to a fine of up to five times the amount applicable to natural persons (art. 85 of the New Criminal Code).

Participation and attempt (art. 27)

Complicity is a criminal offence (arts. 19, 20 and 778 of the New Criminal Code and art. 3 of the Money-Laundering Act). Participation in an association with a view to the commission of, or conspiracy to commit, an offence are punishable in the context of money-laundering (art. 3 of the Money-Laundering Act). Attempt is

defined in article 18 of the New Criminal Code. It is specifically established with regard to money-laundering (art. 778 of the New Criminal Code and art. 3 of the Money-Laundering Act). Acts of preparation are punishable in relation to money-laundering, as participation in an association with a view to the commission of an offence (art. 3 of the Money-Laundering Act).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Most of the offences covered by the Convention are regarded as serious offences punishable by a maximum term of imprisonment of 5 to 10 years. Fines, however, do not appear to reflect the gravity of offences in all cases. There appears to be an imbalance between the moral weight of corruption offences and the applicable penalties.

Members of Parliament enjoy immunity which may be lifted only under certain conditions (art. 65 of the Constitution). Prosecution may also be suspended if requested by the National Assembly (art. 65 of the Constitution).

The President of the Republic may be prosecuted only in the case of high treason (art. 119 of the Constitution) and only before the High Court of Justice, which has never met. Other officials enjoy a certain degree of immunity, such as members of the Constitutional Court (art. 5 of Organic Law No. L/2013/008/CNT), members of the Independent National Human Rights Institution (art. 32 of Organic Law No. L/2011/008/CNT of 14 July 2011) and members of the judiciary (art. 16 of the Judges' Statute), but that was not the case with regard to members of the National Anti-Corruption Agency or the National Financial Information Processing Unit at the time of the country visit.

The principle of prosecutorial discretion is established in article 47 of the New Code of Criminal Procedure but is limited by the possibility of bringing a civil suit in criminal proceedings (art. 155 of the New Code of Criminal Procedure). In addition, the State prosecutor is obliged to prosecute when the case is referred to him or her by the National Financial Information Processing Unit (art. 29 of the Money-Laundering Act) The prosecutor must inform any plaintiff in writing when a decision has been made to terminate proceedings, regardless of the offence (art. 50, second paragraph, of the New Code of Criminal Procedure).

Release of the accused pending trial is provided for (arts. 235 et seq. of the New Code of Criminal Procedure) and a series of measures is applicable to ensure the presence of the person at his or her trial (art. 239 of the Code). Pretrial detention may be ordered under certain conditions (art. 235 of the Code).

Early release or parole are provided for under certain conditions (arts. 1006 and 1072 of the New Code of Criminal Procedure). The decision rests with the judge responsible for enforcing sentences.

The General Civil Service Regulations (art. 76) and the Statute governing the Judiciary (arts. 35 and 36) provide for disciplinary measures in the case of serious breaches. In practice, however, disciplinary penalties are often used rather than prosecution and criminal punishment.

Disqualification from holding public office is established as an additional, optional penalty in cases of money-laundering (art. 41 (6) of the Money-Laundering Act). That provision has also been included in the draft Anti-Corruption Act (art. 113 (4)). However, it is unclear whether the provision also covers the holding of office in an enterprise owned in whole or in part by the State.

Article 1006 of the New Code of Criminal Procedure establishes the principle of the reintegration into society of persons sentenced to deprivation of liberty.

Guinea has not taken measures to encourage persons who participate or who have participated in the commission of a corruption offence to cooperate with the investigation and prosecution services. The provisions of the draft Anti-Corruption

Act that protect whistle-blowers, witnesses, experts and victims are not applicable to the aforementioned persons.

Protection of witnesses and reporting persons (arts. 32 and 33)

The New Code of Criminal Procedure provides for protection of the identity of persons who cannot plausibly be suspected of committing or attempting to commit an offence and who are able to provide evidence (arts. 864 to 869). The draft Anti-Corruption Act provides for special State protection for whistle-blowers, witnesses, experts, victims and their relatives (arts. 94 and 95). The conditions under which that protection may be provided are yet to be established by decree. Article 872 of the New Code of Criminal Procedure provides for the possibility of using audiovisual or sound recordings to protect the identity of such persons.

Articles 4 and 155 of the same Code allow any person who has been harmed personally and directly by the commission of an offence to bring a civil suit.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

A comprehensive confiscation regime has been established (art. 64 of the New Criminal Code). In corruption cases, confiscation is optional and is limited to items that were used or intended to be used to commit the offence and to the proceeds of the offence (art. 781 of the Code). In money-laundering cases, confiscation is extended to all cases provided for by the Convention (art. 43 of the Money-Laundering Act).

The draft Anti-Corruption Act provides for the seizure and freezing of property in relation to corruption offences, as well as of any items enabling that property to be identified (art. 111). The investigating judge may order any freezing, seizure and provisional measures that may be necessary (art. 168 of the New Code of Criminal Procedure). The New Code of Criminal Procedure provides for the establishment of an agency responsible for the management and recovery of seized and confiscated assets (arts. 964 et seq.) However, at the time of the country visit, that agency was not yet operational.

In money-laundering cases, the Money-Laundering Act provides for the confiscation of all property that belongs, directly or indirectly, to a convicted natural or legal person (art. 43.2.). Owners of property liable to confiscation must demonstrate the lawful origin of the property, or that he or she was unaware of its illicit origin (art. 43.1.).

Protection of the rights of bona fide third parties is partially covered (art. 948 of the New Code of Criminal Procedure and art. 41 (9) of the Money-Laundering Act).

Bank secrecy cannot be invoked in money-laundering cases (art. 34 of the Money-Laundering Act). The draft Anti-Corruption Act also contains provisions to that effect (art. 49).

Statute of limitations; criminal record (arts. 29 and 41)

Corruption and related offences are not subject to a statute of limitations period (preamble to the Constitution and art. 69 of the draft Anti-Corruption Act).

There are no specific provisions enabling convictions handed down in another State to be taken into account when prosecuting offences. Guinea has not yet established a central registry of criminal records.

Jurisdiction (art. 42)

Guinea has established the jurisdiction of its national courts over the cases referred to in article 42, with the exception of offences committed against it or against one of its nationals (arts. 9 and 12 of the New Criminal Code). The Money-Laundering Act provides for extended jurisdiction over money-laundering offences committed by any person in a third State when an international convention grants jurisdiction to its national courts (art. 44).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Civil Code provides that any legal act having an immoral or illicit purpose is void (art. 1066). In addition, the draft Anti-Corruption Act provides for the annulment of any contract concluded or obtained through corruption (art. 17).

Any person who has been harmed directly by an offence may bring a civil suit for damages (arts. 4 and 155 of the New Code of Criminal Procedure). Associations have recently been granted the power to initiate legal action (art. 156 of the same Code).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Although the legislation of Guinea establishes a number of bodies specialized in combating and preventing corruption, the institutional architecture is still being developed. The legislation is sometimes contradictory in terms of delimitation of the powers, roles and mandates of those bodies (for example, the National Anti-Corruption Agency and the Court of Audit; see art. 80 of the draft Anti-Corruption Act and art. 116 of the Constitution). The National Anti-Corruption Agency also suffers from a lack of budgetary stability, statutory and operational independence and human capacity. The draft Anti-Corruption Act provides for the possibility of the retention by the Agency of 10 per cent of the assets it recovers, to ensure its continuity (art. 85). However, that power to recover assets is currently held only by the Treasury and is to be transferred to the agency responsible for the management and recovery of seized and confiscated assets.

The New Code of Criminal Procedure provides for the establishment of specialized courts (art. 875).

The National Anti-Corruption Agency has concluded partnership agreements with other authorities, including the special agencies responsible for combating drugs and organized crime, and maintains close ties with the National Financial Information Processing Unit. The Unit has liaison officers within various agencies such as the police, the gendarmerie, customs and the Central Bank (art. 21 of the Money-Laundering Act).

Banks and other financial institutions are required to report suspicious transactions to the National Financial Information Processing Unit (art. 26 of the Money-Laundering Act) and, in principle, will be required to report such transactions to the National Anti-Corruption Agency (art. 47 of the draft Anti-Corruption Act). The draft Anti-Corruption Act provides for the establishment of freephone lines to facilitate the reporting of corruption offences (art. 102).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- Corruption offences and related offences are not subject to a statute of limitations period (art. 29)
- The prosecutor is required to prosecute in cases of civil action for damages and when cases are referred to him or her by the National Financial Information Processing Unit. The prosecutor is also required to inform any plaintiff in writing of the termination of proceedings (art. 30 (3)).

2.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, it is recommended that Guinea:

- Ensure the application of the New Criminal Code and the New Code of Criminal Procedure in practice (arts. 15, 17, 19, 20, 21, 31 and 35)
- Harmonize the various texts on corruption (arts. 15, 16, 17, 18, 19 and 21)

- Adopt the draft Anti-Corruption Act after verifying its consistency with other laws (arts. 15, 16, 20, 30 (7), 31, 32, 34, 36, 39 and 40)
- Ensure that the definitions of national and foreign public officials include all the persons referred to in article 2 of the Convention (arts. 15 (a), 16 (2) and 20)
- Review the criminal penalties applicable to acts of embezzlement, misappropriation and other diversion of property by a public official and ensure the application of those penalties (art. 17)
- Extend the offence of active trading in influence to any person (art. 18 (a))
- Consider making the system for declaring and verifying declarations of assets fully operational to enable the effective detection of illicit enrichment (art. 20)
- Expand the asset declaration system to include other persons such as tax officials, customs officials, army officers, senior police officers, mayors and members of parliament
- Ensure that attempt to commit an offence established in accordance with the Convention is criminalized (art. 27)
- Review the penalties applicable to corruption and money-laundering offences in order to ensure that they take full account of the gravity of those offences (art. 30 (1))
- Ensure that the provisions relating to immunities and jurisdictional privileges do not constitute an obstacle to prosecution (art. 30 (2))
- Consider establishing enhanced disciplinary procedures, including the removal or reassignment of any public official convicted of an offence (art. 30 (6))
- Consider ensuring that all convicted persons are prohibited from holding public office or holding office in an enterprise owned in whole or in part by the State (art. 30 (7))
- Ensure that disciplinary penalties are not a substitute for prosecution and criminal punishment (art. 30 (8))
- Provide for the possibility of confiscating proceeds of crime and property used in or destined for use in the commission of any offence established in accordance with the Convention (art. 31 (1))
- Consider granting the National Financial Information Processing Unit administrative powers relating to freezing (art. 31 (2))
- Operationalize the agency responsible for the management and recovery of seized and confiscated assets (art. 31 (3))
- Consider applying the other categories of confiscation, as in the case of money-laundering, to all offences established in accordance with the Convention (art. 31 (4), (5) and (6))
- Ensure that bank secrecy is not an obstacle to prosecution, in accordance with the Money-Laundering Act (arts. 31 (7) and 40)
- Strengthen protection of the rights of bona fide third parties (art. 31 (9))
- Establish a system of special State protection for whistle-blowers, witnesses, experts, victims and their relatives, in accordance with the Convention (arts. 32 and 33)
- Clearly define the powers, roles and mandates of the bodies responsible for combating offences established in accordance with the Convention, and give them the necessary independence, capacity and resources (art. 36)
- Take legislative and other measures to encourage persons who participate or who have participated in the commission of a corruption offence to cooperate with the investigation and prosecution services; consider implementing

measures for the reduction of sentences; and extend the measures provided for by the draft Anti-Corruption Act to protect whistle-blowers, experts, witnesses and victims to persons who have cooperated in the investigation or prosecution of an offence (art. 37)

- Strengthen direct cooperation between national authorities responsible for detecting and combating offences (art. 38)
- Continue to encourage cooperation between national investigating and prosecuting authorities and the private sector, and encourage persons to report the commission of an offence (art. 39)
- Implement provisions relating to criminal records (art. 41)
- Consider extending the jurisdiction of national courts when the offence is committed against Guinea or against one of its nationals (art. 42 (2)).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Training and capacity-building programmes:
  - For officials at the Court of Audit (art. 20)
  - For officials at the National Anti-Corruption Agency (arts. 20, 21, 22, 34 and 36)
  - To ensure sufficient audiovisual means (art. 32)
  - For the authorities responsible for establishing and managing programmes for the protection of witnesses and experts (art. 32)
  - For the authorities responsible for establishing and managing reporting programmes and mechanisms (art. 33)
  - To strengthen the institutional capacities of supervisory bodies (art. 34)
  - For the authorities responsible for establishing and managing protection programmes (art. 37)
  - For the authorities responsible for regulating private sector matters (art. 39)
  - For the authorities responsible for establishing and managing reporting programmes and mechanisms (art. 39)
  - For officials responsible for prosecution and conviction, in relation to specific jurisdictional matters (art. 42)
- The drafting of legislation (arts. 30, 36 and 37)
- Summary of good practices and lessons learned (arts. 31, 33, 34, 35, 36, 37, 38, 39 and 41)
- Legal advice (arts. 32, 33, 35, 39 and 41)
- Model legislation (art. 32)
- Model agreements or arrangements (arts. 32 and 37)
- On-site assistance provided by a qualified expert (arts. 33, 35, 36, 37, 38, 39 and 41).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Guinea has incorporated provisions on extradition into the New Code of Criminal Procedure and the Money-Laundering Act. Nonetheless, Guinea has also signed a number of extradition agreements, including with Senegal, Sierra Leone, Liberia,

Côte d'Ivoire, Guinea-Bissau and Mali. It is also a party to the African Union Convention on Preventing and Combating Corruption and the ECOWAS Convention on Extradition.

Extradition is usually subject to the dual criminality requirement (art. 796 of the New Code of Criminal Procedure). However, that requirement may be waived on the basis of direct application of the Convention and on condition of reciprocity (art. 151 of the Constitution). The maximum sentence applicable to the offence in question must be greater than or equal to two years (art. 798 of the New Code of Criminal Procedure). That requirement does not apply in money-laundering cases (art. 69 of the Money-Laundering Act). In the case of several interrelated offences, extradition is possible when the sentence applicable under the law of the requesting State for all the offences is greater than or equal to two years (art. 798 of the New Code of Criminal Procedure).

In direct application of the Convention, offences established in accordance with the Convention are not considered to be political offences, and are all regarded as extraditable offences (art. 3 (1) of the ECOWAS Convention on Extradition and art. 798 of the New Code of Criminal Procedure).

Guinea does not make extradition conditional on the existence of a treaty (art. 795 of the New Code of Criminal Procedure) and considers the Convention to be a legal basis for extradition, but has not yet informed the Secretary-General of that fact.

There is a simplified extradition procedure in respect of requests made by a State member of ECOWAS if the person consents to being extradited (art. 821 of the New Code of Criminal Procedure), and in respect of money-laundering cases (art. 70 of the Money-Laundering Act). Similar provisions are also contained in the cooperation agreement with Senegal (art. 38). In urgent circumstances, the person whose extradition is requested may be detained (art. 818 of the New Code of Criminal Procedure, art. 22 of the ECOWAS Convention on Extradition and art. 72 of the Money-Laundering Act).

The extradition of nationals is not possible (art. 799 of the New Code of Criminal Procedure). The principle of *aut dedere aut judicare* is established in relation to cases in which requests to extradite foreigners are refused (art. 802 of the Code). With regard to nationals, that principle is established in a number of conventions (art. 15 of the African Union Convention on Preventing and Combating Corruption and art. 10 of the ECOWAS Convention on Extradition).

The legislation of Guinea does not provide for the possibility of enforcing a sentence imposed abroad if the extradition of a national for the purposes of enforcing a sentence is refused.

The rights of individuals who are subject to an extradition procedure are guaranteed by the Constitution (art. 9).

The refusal of extradition requests made for discriminatory reasons relating to the sex, race, religion, nationality or ethnic origin of the person whose extradition is requested is not provided for.

The fact that an offence is considered to involve fiscal matters is not included among the grounds for refusal of an extradition request (art. 799 of the New Code of Criminal Procedure). However, it is a ground for refusal under the ECOWAS Convention on Extradition (art. 9).

The possibility of consulting the requesting State Party before refusing to grant extradition is established by the ECOWAS Convention on Extradition (arts. 18 and 19).

The transfer of sentenced persons is not provided for. Nonetheless, ad hoc agreements have already been signed with other countries (Cuba and the United States of America). The transfer of sentenced persons is provided for in the cooperation agreement concluded with Senegal (arts. 57 to 62).

The transfer of criminal proceedings is provided for in money-laundering cases (arts. 45 to 50 of the Money-Laundering Act) and between States parties to the ECOWAS Convention on Mutual Assistance in Criminal Matters (arts. 21 to 32).

Mutual legal assistance (art. 46)

Mutual legal assistance is governed by articles 785 to 794 of the New Code of Criminal Procedure, articles 51 to 68 of the Money-Laundering Act, articles 114 et seq. of the draft Anti-Corruption Act and by the ECOWAS Convention on Mutual Assistance in Criminal Matters.

Mutual legal assistance may be provided in respect of offences involving legal persons (arts. 858 to 862 of the New Code of Criminal Procedure).

Possible forms of mutual legal assistance are partly governed in domestic law by the Money-Laundering Act (art. 51). The ECOWAS Convention on Mutual Assistance in Criminal Matters also contains provisions on forms of mutual legal assistance (art. 2 (2)). Mutual legal assistance for the purposes of freezing, seizing, confiscating and recovering assets is provided for by the draft Anti-Corruption Act (art. 114), but appears to be limited to situations in which requests are addressed to the National Anti-Corruption Agency.

There are no provisions on the transmission of relevant information without prior request, except with regard to money-laundering, in the case of which information is transmitted through the National Financial Information Processing Unit (art. 25 of the Money-Laundering Act).

The legislation of Guinea establishes the principle of confidentiality of information received through mutual legal assistance (art. 794 of the New Code of Criminal Procedure and art. 54 of the Money-Laundering Act). However, the possibility of disclosing information under certain conditions, including information that is exculpatory to a defendant, is not expressly provided for.

The New Code of Criminal Procedure does not establish grounds for refusal of mutual legal assistance. Those grounds are established mainly by the Money-Laundering Act and the draft Anti-Corruption Act.

The fact that bank secrecy cannot be invoked as a ground for refusing a request is expressly established by the Money-Laundering Act (art. 53), the draft Anti-Corruption Act (art. 115) and the ECOWAS Convention on Mutual Assistance in Criminal Matters (art. 4 (2)).

The absence of dual criminality does not constitute a ground for refusal (art. 53 of the Money-Laundering Act, art. 115 of the draft Anti-Corruption Act and arts. 25 and 26 of the ECOWAS Convention on Mutual Assistance in Criminal Matters) and seems to be acceptable on condition of reciprocity. The fact that an offence involves fiscal matters does not constitute a ground for refusal.

Only the ECOWAS Convention on Mutual Assistance in Criminal Matters provides for the temporary transfer of persons for purposes of identification and testimony (art. 14).

Guinea has not designated a central authority responsible for receiving requests for mutual assistance. The New Code of Criminal Procedure provides for the transmission of requests through diplomatic channels (art. 785), while the draft Anti-Corruption Act grants the relevant powers to the National Anti-Corruption Agency with regard to corruption cases (art. 114). Guinea has not established the acceptable languages for requests.

The form and content of requests are specified in certain provisions (art. 52 of the Money-Laundering Act and art. 125 of the draft Anti-Corruption Act). However, the relevant provisions of the Convention are directly applicable.

In principle, requests for mutual legal assistance are executed in accordance with the rules of the requested State Party, unless the States agree otherwise (art. 788 of the

New Code of Criminal Procedure, art. 121 of the draft Anti-Corruption Act and art. 4 (4) of the ECOWAS Convention on Mutual Assistance in Criminal Matters.

Hearings by videoconference for the purposes of testimony are provided for by the New Code of Criminal Procedure (art. 872). However, such hearings have not yet taken place in practice.

The principles of speciality and confidentiality are established in accordance with the Convention (art. 794 of the New Code of Criminal Procedure and art. 54 of the Money-Laundering Act).

Special legislative provisions establish the obligation to inform the requesting State of the grounds for refusal to provide mutual legal assistance (art. 53 of the Money-Laundering Act, art. 115 of the draft Anti-Corruption Act and art. 4 of the ECOWAS Convention on Mutual Assistance in Criminal Matters). However, that obligation is not contained in the New Code of Criminal Procedure (art. 789).

Although there are no provisions establishing what constitutes a reasonable time frame for execution of a request for mutual legal assistance, such requests must be executed within a period agreed between the two States (art. 788 of the New Code of Criminal Procedure and art. 121 of the draft Anti-Corruption Act). Those provisions do not establish the possibility of postponing execution of a request under certain conditions, including where the assistance requested would interfere with an ongoing investigation, or the possibility of agreeing on a new deadline with the requesting State Party in the case of refusal or suspension of execution of a request. Safe conduct is governed by the ECOWAS Convention on Mutual Assistance in Criminal Matters (art. 15).

The costs of executing requests for mutual legal assistance are regulated only by the draft Anti-Corruption Act (art. 123). In principle, those costs are borne by Guinea as the requested State. However, when the costs are significant or external experts are consulted, the requesting State may be asked to bear a portion of such costs.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Guinea is establishing cooperation between law enforcement authorities through the International Criminal Police Organization (INTERPOL) network and the Network of West African Central Authorities and Prosecutors against Organized Crime (WACAP). The WACAP Charter also provides for the exchange of information between central authorities, judges and police in order to prevent and combat serious transnational organized crime. Guinea has liaison officers in the INTERPOL offices in Lyon (France) and Djibouti. In addition, the National Anti-Corruption Agency is a member of the Network of National Anti-Corruption Institutions in West Africa (NACIWA). Article 25 of the Money-Laundering Act also provides for direct cooperation between the National Financial Information Processing Unit and its foreign counterparts. The Unit has signed a number of cooperation agreements, including with the financial intelligence units of Cabo Verde, the Niger, Burkina Faso, Sierra Leone and Togo. Furthermore, Guinea is a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA).

Guinea has itself highlighted the practical challenges it faces in cooperation concerning offences committed using modern technology.

Guinea may conduct joint investigations with members of INTERPOL, but has not yet carried out a joint investigation with another national police force.

The special investigative techniques provided for by the New Code of Criminal Procedure (arts. 876 to 882) cannot be used to investigate corruption cases; they can be used only to investigate money-laundering (art. 873 of the Code). The use of those techniques still takes place exclusively through INTERPOL and Guinea has

not concluded any agreements regarding their use. In addition, the admissibility of evidence obtained through such techniques poses a problem.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- The dual criminality requirement may be waived in respect of extradition on condition of reciprocity (art. 44 (1) and (2))
- There is no minimum custodial penalty requirement for extradition with regard to money-laundering (art. 44 (3) and (7))
- Guinea accepts many forms of cooperation, even in the absence of legislation or pre-existing agreements, on the basis of ad hoc arrangements (arts. 45 and 49).

3.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, it is recommended that Guinea:

- Ensure that the New Code of Criminal Procedure is implemented (arts. 44 and 46)
- Adopt the draft Anti-Corruption Act after making it consistent with existing laws (art. 46)
- Inform the Secretary-General:
  - That it considers the Convention to be a legal basis for extradition (art. 44 (6) (a))
  - Of the central authority responsible for receiving and transmitting requests for mutual legal assistance, once that authority has been identified (art. 46 (3) (j) and (k) and (13))
  - Of the acceptable languages for requests for mutual legal assistance (art. 46 (14)).
- Provide for a simplified extradition procedure beyond the ECOWAS framework, in line with the procedure applicable in money-laundering cases (art. 44 (9))
- Clarify, at the legislative level, the principle of *aut dedere aut judicare* in cases in which a request to extradite one of its nationals is refused, and the fact that a sentence imposed by another State party will be enforced in Guinea if extradition for the purposes of enforcing a sentence is refused (art. 44 (11) and (13))
- Provide that extradition may be refused when there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person concerned on account of that person's sex, race, religion, nationality, ethnic origin or political opinions (art. 44 (15))
- Ensure that an extradition or cooperation request cannot be refused on the sole ground that the offence involves fiscal matters (arts. 44 (16) and 46 (22))
- Provide for the possibility of consulting the requesting State Party before refusing extradition (art. 44 (17))
- Consider entering into permanent agreements or arrangements on the transfer of sentenced persons (art. 45)
- Specify in its national legislation the type of mutual legal assistance that Guinea is able to provide (art. 46 (3))

- Consider the possibility of transmitting information relating to criminal matters without prior request in cases other than money-laundering (art. 46 (4))
- Provide for the possibility of disclosing information that is exculpatory to an accused person (art. 46 (5) and (19))
- Regulate safe conduct beyond the ECOWAS framework (art. 46 (27))
- Consider extending the scope of its provisions relating to the transfer of criminal proceedings beyond money-laundering (art. 47)
- Endeavour to cooperate to respond to offences committed through the use of modern technology (art. 48 (3))
- Extend the application of special investigative techniques to corruption offences and consider entering into agreements or arrangements in that regard and facilitating controlled delivery (art. 50 (1) to (4)).

3.4. Technical assistance needs identified to improve implementation of the Convention

In order to improve the implementation of chapter IV of the Convention, Guinea has indicated the following technical assistance needs:

- Summary of good practices and lessons learned (arts. 44, 46, 47, 48, 49 and 50)
- On-site assistance provided by a qualified expert (arts. 44, 47, 48, 49 and 50)
- Model treaty/treaties, agreement(s) or arrangement(s) (arts. 44, 46, 49 and 50)
- Capacity-building programmes:
  - For the authorities responsible for international cooperation in criminal matters (arts. 44, 46, 47, 48, 49 and 50)
  - Relating to the use of modern technology (arts. 46 and 48)
  - For the authorities responsible for designing and managing the use of special investigative techniques (art. 50).
- Legal advice (arts. 47 and 50)
- Specialized training in the area of cybercrime (art. 48).